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EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

**Re: Request For the Adoption of Non-Rural Insular Universal Service
Support, CC Docket Nos. 96-45, 00-256, 98-77, 98-166**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRT") has asked the Federal Communications Commission ("Commission") to fulfill the mandate of the Telecommunications Act and complete the process begun six years ago to ensure the comparability and affordability of rates in insular areas. While the Commission has provided explicit support mechanisms for high-cost areas and rural areas, the Commission has not yet provided an insular support mechanism applicable to non-rural companies. The Commission has repeatedly acknowledged that insular carriers operate under unique conditions.

In February, PRT reiterated its call for a high-cost support mechanism for non-rural insular carriers based on carriers' embedded costs, building upon the Commission's successful rural support program. To that end, the Commission has before it a complete and adequate record, based on a Joint Board referral, demonstrating the clear need for such support as well as a clear statutory mandate under which it can act. Therefore, there is no need for further referral to the Joint Board or another rulemaking to address these issues. In fact, additional proceedings would only risk further damage to insular areas that currently lack adequate universal service support. The full procedural history of this issue is described below.

Joint Board Referral: In 1996 the Commission asked the Joint Board to "prepare recommendations regarding the best means of establishing a new universal service

support mechanism for rural, insular, and high-costs areas.”¹ In doing so, the Commission was “guided by . . . our obligations toward rural, insular and high-cost areas and low-income consumers,” specifically Section 254(b)(3) of the Act.²

After thoroughly examining these issues, the Joint Board “recognize[d] the special circumstances faced by carriers and consumers in the insular areas of the United States.”³ The Joint Board recommended that both non-rural insular carriers and rural non-insular carriers transition to a forward-looking cost support mechanism, but the Board proposed that carriers serving both rural and insular areas use embedded costs for the foreseeable future.⁴

In the initial *Universal Service Order*, the Commission did not adopt the Joint Board’s recommendation for high-cost support as it applied to insular and rural carriers. The Commission attempted to minimize the impact of its decision by asserting that “even if they are not classified as rural carriers, non-rural carriers that serve Alaska or insular areas will continue to receive universal service support if their service areas are high cost areas.”⁵ However, the Commission admitted that “forward-looking economic costs models that we have been presented to us so far do not include any information on Alaska or the insular areas,” and furthermore “recognized the unique situation faced by carriers serving Alaska and insular areas may make selection of cost inputs for those carriers especially challenging.”⁶ These are the same basic concerns that led the Commission to create a separate rural support mechanism.

In 1997 and again in 2001, PRT sought reconsideration of the FCC’s *Universal Service Order* contending that the FCC “essentially reads out of the statute the guarantee of universal service for one distinct population segment – those

¹ *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092, 18112 (1996) (“*Universal Service NPRM*”).

² *Id.* at 18101.

³ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 308 (1996) (“*First Recommended Decision*”).

⁴ *Id.* at 184-85. As indicated later in this letter, the FCC eventually modified substantially this recommendation with respect to rural carriers.

⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8946 (1997) (“*Universal Service Order*”).

⁶ *Id.* at 8947.

citizens living in insular areas that are not served by rural carriers.”⁷ PRT established that “[v]irtually no provision has been made for insular areas,” a fact which remains true to this day.⁸ The 1997 petition is still pending.

Further Notice of Proposed Rulemaking: In its *First Recommendation Decision*, the Joint Board also “recommended that the Commission work with an affected state if subscribership levels in that state fall from the current levels.”⁹ Based on that recommendation, the Commission committed to study “insular areas where subscribership levels [were] particularly low.”¹⁰ The Commission explicitly “agree[d] with Puerto Rico Tel. Co. that, because the Puerto Rico subscribership level remains significantly below the national average, it is not appropriate to delay action until a subscribership level that is already low declines further.”¹¹ To remedy, the low penetration rates, the Commission agreed to “issue a Public Notice to solicit further comment on the factors that contribute to low subscribership levels that currently exist in insular areas, and to examine ways to improve subscribership in these areas.”¹²

Based largely upon the Joint Board’s recommendation to further study areas with low subscribership, the Commission in 1999 issued a Further Notice of Proposed Rulemaking designed to “promot[e] deployment and subscribership in unserved and underserved areas, including tribal and insular areas.”¹³ The Commission did not refer these issues back to the Joint Board, as it is in the sole discretion of the Commission whether to refer additional issues to the Joint Board, and, furthermore, the Commission’s action, in this instance, was based on a Joint

⁷ *Puerto Rico Telephone Company*, Petition for Reconsideration, CC Docket No. 96-45 at 1 (filed July 17, 1997) (“*PRTC Petition for Reconsideration*”). In August 2001, PRT refreshed the record for its Petition upon the FCC’s request. See *Public Notice Parties Asked to Refresh the Record Regarding Reconsideration of Rules Adopted in the 1997 Universal Service First Report and Order*, CC Docket 96-45, DA 01-1647 (rel. July 11, 2001).

⁸ *PRTC Petition for Reconsideration* at 5.

⁹ *Universal Service Order* at 8997.

¹⁰ *Id.* at 8790-91.

¹¹ *Id.* at 8844.

¹² *Id.* at 8843.

¹³ *Federal State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999) (“*Insular NPRM*”).

Board recommendation.¹⁴ In the FNPRM, the Commission recognized that insular areas “may face unique problems that could limit their ability to participate in and benefit from all the universal service programs,” and, therefore, the Commission acknowledged the “potential need to tailor universal service support for . . . telecommunications carriers in insular areas.”¹⁵

A year later, the Commission provided additional support for tribal lands based on the original Joint Board referral and the 1999 FNPRM.¹⁶ The Commission felt compelled to act quickly to assist tribal lands because of penetration rates far below the national average, finding that these “communities on average, have the lowest reported telephone subscribership levels in the country.”¹⁷ The Commission focused upon tribal lands’ poor population; need for access to education, business, and government facilities; and the high cost of providing services to those areas. The Commission, however, characterized its order as only “the first in a series of steps to address the causes of low subscribership within certain segments of our population.”¹⁸ Accordingly the Commission pledged to “take action in a further proceeding to address the remaining issues raised in the *Further Notice* that are not addressed in this Order,” *i.e.*, support for insular areas.¹⁹ The FCC has not yet taken those additional steps for non-rural insular areas with similarly low penetration rates.

Requested Relief: In February, PRT again asked the Commission to fulfill the promise of the Act to support insular areas. It is a matter of happenstance that this omission is felt only by Puerto Rico as all other insular areas qualify for rural support. The overlap between rural and insular carriers has allowed insular support to slip through the crack for over six years. The impact is real and focused entirely

¹⁴ See 47 U.S.C. § 410

¹⁵ *Insular NPRM* at 21232.

¹⁶ *Federal State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal Lands and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) (“*Tribal Lands Order*”).

¹⁷ *Id.* at 12213-14.

¹⁸ *Id.*

¹⁹ *Id.* at 12215.

on PRT, which has had all of its high-cost support, over \$40 million annually, stripped away.

During that time, PRT has seen its strikingly low penetration rate drop further from 74.5 percent to 71.2 percent as of December 2002. The obstacles facing PRT are great. PRT is forced to provide service on an island with a cost of living higher than the national average, while serving customers with incomes lower than the poorest state. That challenge is complicated further by the prohibitive cost of providing service on the island, with exorbitant loop costs, increased transport costs for all materials and supplies, an irregular and mountainous terrain, additional weather and ocean-related expenses, a dispersed populace as well as the island's poor infrastructure: roads, water, electrical systems, etc.

Faced with those challenges, PRT has also had to try to overcome the loss of all federal high-cost support, despite the explicit promise of the Act and the repeated acknowledgement by the Commission of the unique problems faced by insular carriers. A review of those areas receiving support under the Commissions' current non-rural high-cost support mechanism underscores the absurdity of the results: areas with penetration rates far higher than Puerto Rico, and operational environment far more hospitable than Puerto Rico benefit from support, while the model yields nothing for Puerto Rico. Puerto Rico, PRT, and the other ETCs on the island need immediate action.

PRT's requested relief does differ from the specific recommendation of the Joint Board for non-rural insular carriers, but this deviation does not require an additional referral to the Joint Board as the Commission is not compelled to implement the Joint Board's suggested course of action. In fact, the Commission has in the past rejected or substantially modified other Joint Board recommendations.²⁰ In addition, the Joint Board has already acknowledged the unique needs of insular areas and has additionally recommended that the Commission further investigate areas with low penetration rates like Puerto Rico. Lastly, the real world experience of PRT under a forward-looking cost model establishes that strict application of the Joint Board's initial recommendation and the Commission's initial treatment of non-rural insular carriers would be ruinously shortsighted for Puerto Rico consumers.

Thus, the Commission need not enter into more time consuming proceedings prior to acting. A Joint Board referral has already been completed and the

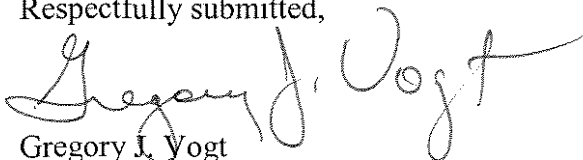
²⁰ See *Universal Service Order* at 8828-31 (rejecting Joint Board recommendation to restrict universal service high-cost support to primary residential and single-line businesses); *id.* at 8942 (rejecting Joint Board recommendation to "calculate the support for LTS on a fixed per-line basis"); *supra* fn 6 (rejecting Joint Board recommendation to transition insular and rural carriers to forward-looking cost model).

Commission acted without an additional referral only three years ago in providing additional support to tribal lands. A further notice or further proceeding is equally unnecessary as the Commission has any number of open proceedings in which to act. The simplest solution would be to issue a third order in the unserved and underserved docket as promised in 2000, tailored to the distinctive needs of insular areas.

Nonetheless, in the event the Commission finds it appropriate to either begin a further proceeding on insular issues, refer this issue to the Joint Board, or wait until the Commission's planned global review of high-cost support, the FCC must provide for interim aid to Puerto Rico. As witnessed by Puerto Rico's slipping penetration rates, the efforts of Puerto Rico and PRT to provide modern quality telecommunications services are frustrated each day by the lack of federal high-cost support. Any such interim aid should allow PRT to base its support on its embedded costs until a full examination of why the mainland models are ill-suited for insular islands, or until the Commission adopts a true insular support mechanism. Puerto Rico has waited six years for explicit insular support, and should not be forced to wait even longer, especially in light of its urgent need for universal service support and the inherent inability of the current support system to provide properly for PRT.

Please let us know if we can be of any assistance with the prompt resolution of this pressing matter.

Respectfully submitted,



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